

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

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|--|---|-------------------------------|
| THOMAS L. REMMENG, JR. |) | |
| Claimant |) | |
| VS. |) | |
| |) | Docket Nos. 220,853 & 237,147 |
| TECHNICAL IRRIGATION SERVICE |) | |
| Respondent |) | |
| AND |) | |
| |) | |
| HARTFORD ACCIDENT & INDEMNITY |) | |
| UNION INSURANCE COMPANY |) | |
| Insurance Carriers |) | |

ORDER

Respondent Technical Irrigation Service and one of its insurance carriers, Hartford Accident & Indemnity, appeal from a preliminary hearing Order entered by Administrative Law Judge Pamela J. Fuller on February 10, 1999.

ISSUES

The Order by the Administrative Law Judge required respondent and its insurance carrier, Hartford Accident & Indemnity, to provide temporary total disability benefits and medical treatment. On appeal, respondent and Hartford contend that the current need for benefits results from a second injury arising out of and in the course of claimant's employment with respondent Technical Irrigation Service. At the time of the second injury, Union Insurance Company had become the insurance carrier for respondent. Hartford contends that Union should be responsible for the benefits ordered in this case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes that the issues raised in this appeal are not jurisdictional issues and the appeal should, therefore, be dismissed.

The Appeals Board has jurisdiction to consider appeals from preliminary hearing orders only in cases where there is a claim that the administrative law judge exceeded his or her jurisdiction. K.S.A. 1998 Supp. 44-551. The Board's jurisdiction specifically includes

jurisdiction to review issues identified as jurisdictional issues in K.S.A. 1998 Supp. 44-534a, including whether claimant's injury arose out of and in the course of his/her employment. The dispute is not, in our view, whether the injury arose out of or in the course of employment. This dispute concerns, instead, which of two insurance carriers is responsible for the benefits ordered. This is not a jurisdictional issue and a claim that the Administrative Law Judge has erred does not constitute an allegation that the Administrative Law Judge has exceeded her jurisdiction.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the appeal filed in this case should be dismissed and the Order entered by Administrative Law Judge Pamela J. Fuller on February 10, 1999, remains in full force and effect as originally entered.

IT IS SO ORDERED.

Dated this ____ day of March 1999.

BOARD MEMBER

c: Henry A. Goertz, Dodge City, KS
Richard J. Liby, Wichita, KS
Mark A. Buck, Topeka, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director